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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re J.G., a Person Coming Under the
Juvenile Court Law.

H034564

(Santa Clara County
Super. Ct. No. JD18508)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

S.G., father of the child at issue here, appeals from a juvenile court restraining order prohibiting father from contacting the child and the child's mother (mother), and requiring that father stay at least 300 yards from them. Father contends that the juvenile court lacked subject matter jurisdiction to issue the restraining order, that the court abused its discretion in issuing the restraining order on mother's behalf, and that the record does not support the issuance of the restraining order on the child's behalf. As we find no error or abuse of discretion, we will affirm the juvenile court's order.

BACKGROUND

Father was sentenced to four years in state prison for manslaughter in Florida in September 1983. He was sentenced to two years in prison for aggravated assault in May 1990. He was sentenced to prison for five years in January 1995, four years in July 1995, and one year in May 1996, for three separate convictions for being an accessory after the fact.

Father and mother married in June 1997. On January 24, 2002, a final judgment for dissolution of their marriage was filed in the Circuit Court for Lake County, Florida. The judgment included a rotating custody order for the child, who was then four years old. In March 2002, mother was described as the “aggressor” in an incident of reported domestic violence between father and mother. In June 2002, mother reported that the child had been sexually molested by his paternal grandfather, but an investigation by law enforcement and social services disclosed no evidence of sexual abuse of the child. In July 2002, mother reported father for domestic violence and father was arrested. Mother filed a petition to modify custody and visitation.

On August 29, 2002, the Lake County, Florida court ordered the minor placed in a shelter due to abuse, abandonment, or neglect. Also on August 29, 2002, the court issued a final judgment of injunction for protection against domestic violence under Florida Statutes Annotated section 741.30, which ordered that father have no contact with mother. The judgment states that the court entered the judgment following a hearing attended by both father and mother and their respective counsel, that the order was entered “without finding of fact,” that the order was entered “intend[ing] that it be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or of the Indian tribe,” and that the injunction shall be in full force and effect until “further order of the court.”

Father was convicted of being a felon in possession of concealed weapons and ammunition, and was sentenced in May 2003 to three years in prison. After mother

regained custody of the child in 2003, she moved with the child to Oregon. On the way there, mother was physically attacked and robbed on the side of the road in Arizona in the minor's presence when their van broke down. Mother moved with the child from Oregon to San Jose in September 2006.

The child was placed into protective custody on September 28, 2007. On October 25, 2007, respondent Department of Family and Children's Services (the Department) filed an amended petition pursuant to Welfare and Institutions Code section 300, subdivisions (b) [failure to protect] and (c) [serious emotional damage] as to the child, who was then 10 years old.¹ The petition alleged that both mother and the child had serious physical and mental health issues, that mother's unresolved mental health problems exacerbate the minor's mental health issues, that mother declined the Department's offer of voluntary services in July 2007, and that on September 27, 2007, mother threatened to flee with the child rather than have him talk in private with social workers. The petition further alleged that father had a criminal history in Florida.

The social worker's report and addendums for the jurisdiction hearing recommended that the child be made a dependent of the court and that mother and the child receive family reunification services. Mother reported that she had "a life-long restraining order" prohibiting father's contact with her and the child. Mother was having regular supervised visits with the child, who was living at the shelter. Father was in prison in Florida. The child was suffering with posttraumatic stress disorder (PTSD) due to having witnessed attacks on mother by father in Florida and by the stranger in Arizona.

The uncontested jurisdiction hearing was held on November 13, 2007.² Father was not present and was not represented by counsel. The juvenile court found the

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

² The record on appeal does not include the reporter's transcripts of any hearing prior to March 30, 2009.

amended petition true and continued the matter for disposition. The social worker's disposition report and addendums recommended that father not be offered reunification services due to his incarceration and prior conviction for a violent felony. (§ 361.5, subds. (b)(12) & (e)(1).) Father was expected to be incarcerated for a DUI conviction and parole violation until November 29, 2009. Father reported that the Florida restraining order had been changed in September 2007 so that he could talk with mother and the child. The child was moved from the shelter to a therapeutic foster home on December 21, 2007. The social worker shared letters from father and the child's paternal aunt with the child at the child's request. The child stated that he wanted to have contact with father and the paternal aunt's family.

The disposition hearing was held on January 4, 2008. Father was not present but was represented by counsel. The court found the child to be a dependent child of the court, continued the placement of the child in foster care, ordered reunification services for the child and mother including supervised visitation, and denied reunification services for father, but allowed father to have contact with the child through letters.

The social worker's report and addendum for the six-month review hearing recommended that the child and mother continue to receive reunification services. The child continued to reside in a therapeutic foster home and was participating in therapy to address his PTSD. Mother was visiting the child regularly and participating in the treatment plan for her mental health and drug addiction problems, although she had had four positive drug test results. Father remained incarcerated in Florida with an expected release date in November 2009, but had been writing letters to the child. The paternal aunt was also writing letters to the child and both father's and the paternal aunt's letters were being shared with the child through the child's therapist.

The six-month review hearing was held on June 25, 2008. Father was not present but was represented by counsel. The court continued the child as a dependent child of the

court, continued his placement in foster care, and continued reunification services for mother and the child.

The social worker's report and addendum for the 12-month review hearing recommended that the child and mother continue to receive reunification services, with another review in 90 days to allow for transition of the return of the child to mother. The child continued to reside in a therapeutic foster home and was participating in therapy and taking medication to address his PTSD. Mother was visiting the child regularly and was participating and making progress in the treatment plan for her mental health and drug abuse problems. Father remained incarcerated in Florida, with an expected release date in June 2009. He continued to write letters to the child and he was requesting visitation with the child upon his release. The paternal aunt also continued to write letters to the child and both father's and the paternal aunt's letters were being shared with the child through the child's therapist. However, the child had not written either father or the paternal aunt.

The 12-month review hearing was held on December 12, 2008. Father was not present but was represented by counsel. The court continued the child as a dependent child of the court, continued the child's placement in foster care, and allowed the child and mother to have extended and frequent unsupervised visits, with an expected date of return of the child to mother's custody of March 28, 2009.

On February 1, 2009, the social worker removed the child from his foster home due to allegations by mother of physical, emotional and sexual abuse of the child by the foster parents. The child was placed with mother on an extended visit on February 6, 2009. On February 13, 2009, the court continued the child as a dependent child of the court and returned the child to mother with family maintenance services.

On March 10, 2009, mother filed an ex parte application and affidavit for a restraining order on behalf of herself and the child against father. Mother alleged that father was due to be released from prison in July 2009, and that he "has an extensive

criminal history, which includes prolonged and violent stalking of me and my son.” The court granted a temporary order and set a hearing for March 30, 2009.

The social worker’s report for an interim family maintenance review hearing recommended that the family maintenance program continue. The child was happy to be back in mother’s care, his educational and mental health needs were being met, and mother had demonstrated that she can provide for the child’s needs. Following a hearing on March 25, 2009, at which father was not present but was represented by counsel, the court ordered that its previous orders were to remain in effect.

Father was not present but was represented by counsel at the continued hearing on March 30, 2009, on mother’s application for a restraining order. The court found that father had been properly served in prison in Florida with notice of the application. It continued the matter so that father could appear telephonically at the hearing on the application. On April 20, 2009, the court continued the matter and asked the parties to brief a jurisdictional issue. “[T]he question that the Court would like counsel to research for me is whether the fact that [father] has submitted to the Court’s jurisdiction in the dependency case, whether that on its own basically gives this Court jurisdiction for the restraining order.”

The social worker’s report for a family maintenance review hearing recommended that family maintenance services continue for mother and the child. The child remained happy to be in mother’s care and his physical, educational, and mental health needs were being met. Mother was participating in her therapy program, and both mother and the child were “learning how to cope with the reality that the father . . . is due to be released from prison in June 2009.” Following a hearing on May 4, 2009, at which father was not present but was represented by counsel, the court ordered that its previous orders were to remain in effect.

On May 21, 2009, counsel for the child filed a brief contending that the juvenile court had personal jurisdiction over father to issue a restraining order even though he was

not in California, and that the court may issue a restraining order even though the alleged acts underlying the request for the restraining order did not occur in California and predated the juvenile court's involvement. On May 26, 2009, counsel for father filed a brief contending that the court lacked the requisite personal jurisdiction over father to issue a restraining order, and that any jurisdiction over father the court had was only to make orders regarding custody and visitation pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, §§ 3400 et seq. (UCCJEA)). Counsel for mother filed a brief contending that the juvenile court gained jurisdiction over father when he was served with notice of the request for the restraining order, that the court had personal jurisdiction over father even if he had not been served with the request, and that the UCCJEA did not apply.

On June 3, 2009, the court heard argument from the parties on the issue of its personal jurisdiction over father to issue the requested restraining order. Counsel for the child stated that the child "wants the Court to know that he is, in his words, very concerned about his father's actions and that he does want to have a restraining order in place. And he also wants the Court to know that he has changed his mind from the last court hearing and at this point he does not want to have any contact with his father or visits or phone calls or anything until he turns 18." The court took the matter under submission and continued the matter to June 22, 2009.

On June 10, 2009, father filed a notification of change of mailing address, indicating that he had been released from prison.

At the continued hearing on June 22, 2009, father was not present but was represented by counsel. The court ruled that it had jurisdiction to grant a restraining order and it set the matter for a contested hearing on mother's application.

The contested hearing was held on July 29, 2009. Neither father nor the child, who was then 12 years old, was present. Father's counsel requested that the court grant summary judgment in his favor because the most recent allegation in the application

occurred seven years previously, in July 2002, and mother has no reason to fear for her safety, as father lives across the country. The court denied the request. Father also argued that the Florida injunction was res judicata, as the facts supporting that restraining order were the same facts as alleged in mother's application here. The court reserved ruling on the motion.

The social worker testified that he has been the child's social worker since December 2007. The child reported the day before the hearing that he still has memories of seeing father stalking his mother with a knife and a fist, and that he is still afraid of father. "[T]hese recollections are vivid and they are still affecting [the child]'s emotions and they are still affecting ultimately his mental health. And the perception of this recollection being vivid and true and real makes it, at least for [the child], makes it real." The child still suffers from PTSD. Mother has reported her continuing fear of father, and her fear and anxiety are real. Father knows that the child is in mother's custody and he is trying to make contact with the child through letters. The social worker believed a restraining order would provide the safety for both mother and the child that they need for their mental health. If the court were not to issue a restraining order, the social worker believed that mother could be at risk for fleeing with the child.

The social worker further testified that father denies mother's claims of domestic violence, and claims that mother put him in jail for something he did not do. He has never been convicted of domestic violence. Father has reported that he would like to talk to the child and give the child his version of what happened between father and mother. Father claims that mother was the perpetrator of the domestic violence, and that he does not believe that women should be maltreated or abused. Father loves his son and cannot wait to re-establish a connection with him, first by telephone and eventually in person. However, father's criminal convictions cause concerns regarding "the type of control that [father] has, over his emotion and feelings, and he has outbursts of anger."

Father was contacted and appeared telephonically at the hearing following the social worker's testimony.

Mother testified that father was physically abusive to her when they lived together. On July 4, 1999, father "basically mopped the floor with" her. Father slapped her head against the floor, punched her, kicked her, and told her that he was going to kill her and bury her in the backyard next to their dog. Father had previously shot the dog for eating pizza that was left on the table. The child woke up during the assault incident and saw father pushing mother and mother looking scared. Father brandished a machete in October 2001 when he threw mother and the child out of his home with just the clothes on their backs. Father kept the machete on his back porch and he usually used it for beheading chickens. Father emptied their joint bank account which contained her social security funds, transferred the money to a personal account, brandished the machete, and told mother and the child to get out. She was served with divorce papers three days later. She could not take their cats with them when they left and, in December 2001, mother asked father where her and her son's cats were. Father said that they were dead. The cats were never found and she believes that father killed them.

Mother testified that between October 2001 and July 2002, she had to move several times because father stalked her. He constantly showed up at her home, sat in his truck, and said I'm not leaving; he peeked in her windows and walked in her door; he constantly phoned her and called her names; he wrote her letters and said that he could kill her. Once, during the time he had custody of the child, father came to her home and told her to get in his truck because the child was "broken and bleeding in the road." The child was present in July 2002 when father came to her residence brandishing the machete and stating that he was "going to remove the unclean spirits" from her with the machete. It appeared to mother that father was under the influence of drugs or alcohol and she called 911. Sheriff's deputies arrived, drew their weapons, handcuffed father, and took him to jail. The child saw and heard everything. The Florida restraining order

and father's conviction for being a felon in possession of weapons and ammunition were the result of that incident, and father's latter DUI conviction occurred when he was on parole for that conviction. Mother was told that the restraining order "was indefinite."

Mother further testified that father sent a friend of his to see her in Florida while he was in prison. The friend was not happy with what he thought the situation was, but she clarified the situation for him and he left. "But, you know, doesn't necessarily mean it's going to work out that way the next time." Father's mother died while he was in prison and he did not get to go to her funeral. Mother thinks that father is going to try to make her "pay for that" at his first opportunity. "I don't put anything past him." She has a genuine fear of what would happen if father is not restrained by a protective order. Father's father is in poor health and, when his father dies, there will be nothing holding father in Florida.

Before father testified, his counsel moved for a directed verdict and renewed the objection to the restraining order based on res judicata. The court ruled that father had not carried his burden of showing that the application for the restraining order in Florida was based on the same incidents that were testified to here. The court denied the motion for a directed verdict, finding that there was enough evidence to warrant hearing father's testimony.

Father testified that the reason he believes mother put him in jail for something he did not do was because, at that time, mother had told people that she was leaving him and that she wanted to move. The only way she could get full custody and permission to leave Florida was to put him in jail. Their divorce decree required that mother not leave the county or state without his permission. He went to jail for possession of a weapon by a felon, but he did not have a machete, he had a bowie knife, a large hunting knife, when he went to mother's house. He did not own a machete. Mother called the police and lied to them by saying that he had brandished the knife when he threatened her, but she

testified in court that it never came out of the sheath. He is unhappy about the conviction, but he is “not a spiteful person.”

Father further testified that he did not shoot his dog for eating pizza; his father shot a dog that got into the chicken pen. He did not kill mother’s cats, his dog did. The only domestic violence between mother and him has been when mother attacked him. He has never been convicted of domestic violence. He has never hit mother, slammed her head against the floor, or threatened to kill her, but he has threatened to call the police on her. He did call the police on her one time, but he did not press charges. He has never stalked mother and he has never verbally abused her. The child did see him brandishing a machete at mother once. Mother came to his work while he was sharpening a machete he used there, and she screamed at him. He pointed the machete at her and told her to go home.

He withdrew all the money out of their joint bank account because he heard that mother was going to take the child to California. Although the money had been in both of their names, mother claimed during the divorce that it was all hers and he did not dispute it. He paid all the money back. He filed for divorce because of mother’s domestic violence and drug use. The last time he had contact with mother was when the court put a restraining order on him as part of his sentencing on the weapons charge. Although he was later stopped for a DUI, his sentence for violating parole was for having had contact with the police under Florida’s zero-tolerance law, not for DUI. He does not plan to come to California; he just wants to be able to have contact with the child, not with mother.

After hearing arguments from the parties, the court took the matter under submission.

On August 4, 2009, the court continued the plan of family maintenance for mother and the child upon recommendation of the Department. The social worker had reported that the child is happy and continues to be doing well in mother’s care. The court also

allowed the social worker discretion to authorize phone contacts between father and the child in a therapeutic setting in consultation with the child's therapist. "[W]hile the case remains open, . . . the Court must make every effort to assist [father] in reestablishing the relationship with [the child]."

Regarding mother's request for a restraining order, the court stated that it considered the testimony at the hearing, father's prior criminal history which includes many violent felonies, father's residence outside of California, and the child's "expressed fears." It found that the standard of proof was "a preponderance of evidence of past acts of abuse," and that it could "renew a restraining order without a showing of any further abuse if it finds by a preponderance of evidence that [mother] entertains, . . . 'a reasonable apprehension of future abuse.'" Although it found father to be "a relatively credible witness," it found that there was "a reasonable apprehension of future abuse in this situation. And for that reason, I am going to grant the request for the restraining order." "The restraining order will include [mother] and [the child] as protected parties, but . . . any court-ordered visitation is an exception to the stay-away and no-contact provision." "I will grant the restraining order for a term of three years. I would indicate, however, it's very unlikely that any court would extend this in the future."

The restraining order was filed August 5, 2009. It orders father not to contact mother and the child, and to stay 300 yards away from them. It allows letters from father to the child, routed through the child's therapist, and grants the social worker discretion to authorize phone contact in consultation with the child's therapist.

DISCUSSION

Subject Matter Jurisdiction

Father contends that the court lacked authority to adjudge the child a dependent child of the court and to issue the subsequent restraining order because the court failed to comply with the requirements of the UCCJEA. He argues that Florida maintained continuing and exclusive jurisdiction over the child's custody until such time as it

declined that jurisdiction on the ground that California is the more appropriate forum. The juvenile court had notice that the Lake County, Florida court had exercised jurisdiction over the parents and the child, and acknowledged its obligation to comply with the UCCJEA, but, nevertheless, without compliance, proceeded to enter custody orders and a restraining order.

Mother contends that, because father did not raise this issue during prior hearings or appeal from any of the juvenile court's prior orders, father has not carried his burden of showing that the court lacked authority to issue the restraining order. "[T]here are incomplete existing records of the jurisdictional and dispositional proceedings, including the six and twelve month review hearings from 2008. Throughout the proceedings that are reported, the court expressed a familiarity with the UCCJEA and its provisions on subject matter jurisdiction that strongly suggest full compliance. Given the evidentiary presumptions that the court fulfilled all of its official duties, and that its jurisdiction was proper, and given [father's] burden of producing a record that proves otherwise for purposes of appeal, the challenge herein under the UCCJEA must fail."

The Department has filed a letter brief supporting the juvenile court's issuance of the restraining order without addressing father's contention that the court lacked subject matter jurisdiction to issue the restraining order. The child has not filed a brief.

"California adopted the UCCJEA, formerly UCCJA, in January 2000.^[3] This uniform act is the exclusive method of determining the proper forum in custody disputes involving other jurisdictions. [Citations.] The UCCJEA also governs juvenile dependency proceedings as well as actions to terminate parental rights. [Citations.]" (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1173; *In re Angel L.* (2008) 159 Cal.App.4th 1127, 1136.)

³ California adopted the UCCJA in 1973. (Stats. 1973, ch. 693, § 1.)

Under the UCCJEA, a court “may exercise emergency jurisdiction when a ‘child is present in the state and . . . it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.’ (Fam. Code, § 3424, subd. (a).) The courts have interpreted ‘emergency’ as a situation in which a child is in immediate risk of danger if returned to a parent’s care. [Citations.] Aside from the necessity of protecting a child from immediate harm, presence of the child in the state is the only prerequisite. [Citation.]” (*In re Nada R.*, *supra*, 89 Cal.App.4th at p. 1174.)

As mother notes, any error the court may have made in assuming jurisdiction occurred no later than January 2008, when the court found the child to be a dependent child of the court and continued the child in out-of-home custody. At that time, there was enough evidence for the court to assert emergency jurisdiction. Father was in prison in Florida. Both mother and the child had serious physical and mental health issues, and mother’s unresolved mental health problems were exacerbating the minor’s mental health problems. The child was suffering from PTSD, mother had declined the Department’s offer of voluntary services, and mother had threatened to flee with the child.

In addition, California had continuing jurisdiction because “an emergency can exist so long as the reasons underlying the dependency exist.” (*In re Nada R.*, *supra*, 89 Cal.App.4th at p. 1175.) In *In re Stephanie M.* (1994) 7 Cal.4th 295 at page 312, our Supreme Court found that the juvenile court “had continuing jurisdiction because of the emergency presented by the abuse of the child, and the impossibility of returning her immediately to her parents.” All the evidence with respect to the abuse was in this state. This state was in the better position to adjudicate the best interest of the child with respect to possible reunification with the parents. The parents resided in California. Both parents acceded to the jurisdiction of the court and participated in the reunification services the court offered them. The evidence regarding the child’s present and future care and protection was not more readily available in the other jurisdiction, and the only

evidence that was available in the other jurisdiction was the suitability of the child's grandmother to assume custody pending reunification. On this record, the court found that it could not say "that the [juvenile] court abused its discretion in failing to decide, on its own motion, and in the absence of any controversy on the point whatsoever, to decline jurisdiction." (*Id.* at pp. 312- 313, fn. omitted.)

In this case, all of the evidence with respect to the situation of the child and the capacity for reunification with the parents was in this state. This state was in the better position to adjudicate the best interests of the child with respect to possible reunification. Father was in prison in Florida with an expected release date in late 2009 but mother resided in California. Both parents acceded to the jurisdiction of the court and participated in the services the court offered. The only evidence that was more readily available in Florida was the family's history prior to when mother left there with the child in 2003. Therefore, the juvenile court did not abuse its discretion in failing to decide, on its own motion and in the absence of any controversy on the point, to decline jurisdiction. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 312-313; see also *In re Nada R.*, *supra*, 89 Cal.App.4th at p. 1175 ["If the risk of harm creating the emergency is ongoing, then the court should be afforded jurisdiction to prevent such harm."].)

The Restraining Order on Behalf of Mother

Father contends that the juvenile court abused its discretion in issuing the restraining order on behalf of mother pursuant to section 213.5. He contends that the court treated mother's application as one for renewal of the Florida restraining order, but the Florida order remained in full force and effect without an expiration date pursuant to Florida Statutes Annotated section 741.30. Therefore, the juvenile court had no reason to conclude that there was a reasonable risk that abuse would occur sometime in the future without issuance of a restraining order. Further, as the juvenile court's restraining order expires in three years, the juvenile court's order provides less protection for the mother than does the Florida restraining order.

Mother contends that father has produced no evidence that the Florida restraining order remains in effect. “A new and different order may well have been entered in Florida following the date of this order on August 29, 2002.” Mother further contends that the California order provides more protection for the mother in California, where she resides, than does the Florida order, because it resolves any doubts concerning the terms, scope, and viability of a protection order.

The Department contends that the court acted within its discretion, as the court determined that mother had carried her burden of proof and that she had a reasonable apprehension of future abuse.

“Section 213.5, subdivision (a) provides that, once a juvenile dependency petition has been filed, the juvenile court may issue a temporary restraining order protecting the dependent child and any caregivers of the child.” (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 211.) Section 213.5, subdivision (a) states in pertinent part that the juvenile court may enjoin “any person from behavior, including contacting, threatening, or disturbing the peace” of any child or parent as “necessary.” “Proof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these.” (Cal. Rules of Court, rule 5.630(h)(2).) Mother, as the applicant for the restraining order, had the burden of proving each fact necessary to her request for relief by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

As with any decision regarding an injunction, the decision whether to grant or deny a restraining order under section 213.5 “ ‘rests in the sound discretion of the trial court upon a consideration of all the particular circumstances of each individual case’ ” and ‘will not be modified or dissolved on appeal except for an abuse of discretion.’ [Citations.]” (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 850; *In re Cassandra B.*, *supra*, 125 Cal.App.4th at p. 210.) “ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably

be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.)

Here, the social worker testified that mother has reported her continuing fear of father, and that mother’s fear and anxiety are real. The social worker believed that mother could be at risk for fleeing with the child if the requested restraining order did not issue, and that granting the requested restraining order would give mother the safety she needed for her mental health. Father’s criminal convictions caused concerns for the social worker as they showed that father does not have control over his emotions and feelings and that he has outbursts of anger. Mother testified that she has a genuine fear of what would happen if father is not restrained by a protective order. Father sent a friend of his to see her while he was in prison, and that there could be a “next time.” Father might want to make her “pay” for his having missed his mother’s funeral while he was in prison. And, once father’s father dies, there would be nothing holding father in Florida. Although father has never been convicted of domestic violence and he testified that mother perpetrated domestic violence on him, he admitted brandishing a machete at mother once when she went to his place of work and admitted that he was convicted of being a felon in possession of a weapon because he had a bowie knife on him when he went to mother’s residence. On this record, we cannot say that the juvenile court exceeded the bounds of reason when it granted mother’s application for the restraining order. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.)

Citing *Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275 (*Ritchie*), father contends that the juvenile court had no reason to conclude that there is a reasonable risk that abuse will occur sometime in the future without the issuance of the order. In *Ritchie*, the respondent sought an extension of a protective order under Family Code section 6345. (*Id.* at p. 1280.) This statute provides that an order may be renewed upon request “either for five years or permanently, without a showing of any further abuse since the issuance

of the original order” (Fam. Code, § 6345.) The trial court interpreted this statutory language as entitling the protected party to an extension of a protective order upon request. (*Ritchie, supra*, at p. 1281.) The appellate court reversed, and held that “the trial court should grant a requested extension unless the request is contested and the judge determines the protected party does *not* entertain a ‘reasonable apprehension’ of future abusive conduct.” (*Id.* at p. 1279.)

We note that *Ritchie* did not involve interpretation of section 213.5, and that the language of section 213.5 differs from the language in Family Code section 6345. Even assuming, as the juvenile court did, that the *Ritchie* test applies in the present case, there was no error. The application for the restraining order was contested but, following the hearing, the juvenile court found that mother had carried her burden of proving by a preponderance of the evidence that she does entertain a reasonable apprehension of future abusive conduct. The court relied on the testimony at the hearing noted above as well as father’s extensive criminal history of violent conduct. Accordingly, the juvenile court did not abuse its discretion in granting the restraining order on behalf of mother. (*In re Cassandra B., supra*, 125 Cal.App.4th at p. 210.)

The Restraining Order on Behalf of the Child

Father contends that no substantial evidence supported a finding that a restraining order should issue on behalf of the child. He argues that the child has no reasonable apprehension that his father would direct violence towards him. “Throughout the dependency, no evidence arose indicating the father was threatening violence, stalking, molesting, or interfering with [the child’s] welfare within the meaning of section 213.5, subdivision (a) as defined in [*In re*] *Cassandra B.*”

Mother contends that “there is abundant and substantial evidence in support of the restraining order.”

When an appellant challenges the sufficiency of the evidence, “we view the evidence in a light most favorable to the respondent, and indulge all legitimate and

reasonable inferences to uphold the juvenile court's determination. If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed. [Citation.]" (*In re Cassandra B.*, *supra*, 125 Cal.App.4th at pp. 210-211; see also *In re Misako R.* (1991) 2 Cal.App.4th 538, 545; *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1512.) "It is the trial court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

Here, the child did not testify. However, mother testified that the child had witnessed acts of domestic violence by father on mother. Father admitted that the child did see him brandish a machete at mother. Father also admitted that he had a knife on him when he was arrested at mother's residence in July 2002, and mother testified that the child saw the entire incident. The social worker testified that the child reported the day before the hearing on mother's application for the restraining order that the child still has memories of seeing father stalking mother with a knife and a fist, and that he is still afraid of father. The child's memories affect the child's emotions and ultimately his mental health. The child continues to suffer from PTSD. The social worker believed that a restraining order would provide the safety that the child needed for his mental health. On this record, we find that there is substantial evidence to support the court's issuance of the restraining order on behalf of the child.

DISPOSITION

The restraining order filed August 5, 2009, is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MCADAMS, J.